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4   UNITED STATES DISTRICT COURT

5   NORTHERN DISTRICT OF CALIFORNIA

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7   RED HAT, INC.,   Case No. 24-cv-04740-PCP

8   Plaintiff,   **ORDER GRANTING VIRTAMOVE,
                                             CORP.'S MOTION TO DISMISS,**
9   v.   **DENYING MOTIONS TO SEAL, AND
                                             DENYING RED HAT, INC.'S**
10   VIRTAMOVE, CORP.,   **MOTIONS FOR CONTINGENT
                                             DISCOVERY AND TO AMEND THE**
11   Defendant.   **COMPLAINT**

12   Re: Dkt. Nos. 31, 37, 45, 47, 48, 49, 59

13   Red Hat, Inc. brings this action against VirtaMove, Corp. seeking a declaratory judgment

14   that it does not infringe two VirtaMove patents, U.S. Patent Nos. 7,519,814 ("the '814 patent")

15   and 7,784,058 ("the '058 patent"). VirtaMove now moves to dismiss Red Hat's complaint for lack

16   of subject matter jurisdiction pursuant to Rule 12(b)(1) and for lack of personal jurisdiction

17   pursuant to Rule 12(b)(2).

18   For the reasons discussed herein, the Court grants VirtaMove's motion to dismiss for lack

19   of subject matter jurisdiction and need not address its Rule 12(b)(2) motion.[1] The Court denies as

20   futile Red Hat's related motions for contingent jurisdictional discovery and to amend its

21   complaint. The Court also denies the parties' sealing requests.

22   **BACKGROUND**

23   Red Hat is a software corporation headquartered in Raleigh, North Carolina and

24   incorporated in Delaware. VirtaMove is a Canadian software corporation. Red Hat filed this action

25   on August 5, 2024, seeking a declaratory judgment that it does not infringe Virtamove's '814 and

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28   [1] In conjunction with VirtaMove's motion to dismiss, Red Hat filed an administrative motion for
     leave to file a surreply. VirtaMove filed an administrative motion for leave to file a surreply to
     Red Hat's motion for contingent discovery. The Court grants both motions.

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1   '058 patents. Red Hat alleges that its OpenShift software incorporates third-party containerization

2   technologies Docker and Kubernetes.[2] Red Hat's operative complaint alleges that VirtaMove in

3   2024 initiated litigation in Texas against four companies—IBM (which is Red Hat's parent

4   company), Hewlett Packard Enterprise, Google, and Amazon—alleging that the companies'

5   products infringe its rights under the '814 and '058 patents. Red Hat argues that the infringement

6   claims against these defendants are based on their products' incorporation of the Docker and

7   Kubernetes technologies in the same manner that Red Hat's own software products incorporate

8   those technologies.

9   The Court heard VirtaMove's motion to dismiss and Red Hat's motion for contingent

10   jurisdictional discovery on December 12, 2024. On January 13, 2025, Red Hat filed a motion for

11   leave to file an amended complaint adding allegations that, shortly after the December 2024

12   hearing, VirtaMove filed two more suits in the Western District of Texas alleging patent

13   infringement by certain Microsoft and Oracle products using containerization technologies. Red

14   Hat alleges that these suits directly implicate Red Hat's OpenShift product because Microsoft and

15   Oracle are customers who use the OpenShift product. The Court heard Red Hat's motion for leave

16   to amend its complaint on March 13, 2025. Both in its papers and at the hearing, VirtaMove stated

17   to the Court that Red Hat's products are not implicated in either action.

LEGAL STANDARD

19   **I.   Rule 12(b)(1)**

20   A motion to dismiss filed pursuant to Rule 12(b)(1) is a challenge to the court's subject

21   matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1). A Rule 12(b)(1) challenge may be facial,

22   contending that the complaint's allegations are insufficient to invoke federal jurisdiction, or

23   factual, disputing the allegations that otherwise establish federal jurisdiction. *Safe Air for*

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[2] According to Red Hat's website, "OpenShift is the leading hybrid cloud application platform, bringing together a comprehensive set of tools and services that streamline the entire application lifecycle, from development to delivery to management of app workloads." Docker and Kubernetes are software tools that, among other things, can run applications in an environment called a "container." Kubernetes is an open-source container orchestration system. Docker is a software tool for developing and running applications in containers.

1   *Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In reviewing a factual challenge, courts

2   may "review evidence beyond the complaint" and "need not presume the truthfulness of the

3   plaintiff's allegations." *Id.* In this case, VirtaMove brings a facial challenge, contending that the

4   allegations in the complaint fail to state an Article III case or controversy.

5   Generally, dismissal for lack of subject matter jurisdiction under Federal Rule of Civil

6   Procedure 12(b)(1) "is a procedural question not unique to patent law" governed by regional

7   circuit law. *Toxgon Corp. v. BNFL, Inc.*, 312 F.3d 1379, 1380 (Fed. Cir. 2002). But "[w]hether an

8   actual case or controversy exists so that a district court may entertain an action for [ ] declaratory

9   judgment of non-infringement and/or invalidity is governed by Federal Circuit law." *3M Co. v.*

10   *Avery Dennison Corp.*, 673 F.3d 1372, 1377 (Fed. Cir. 2012).

11   The Declaratory Judgment Act provides that, "[i]n a case of actual controversy within its

12   jurisdiction ... any court of the United States, upon the filing of an appropriate pleading, may

13   declare the rights and other legal relations of any interested party seeking such declaration,

14   whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). "The phrase 'case of

15   actual controversy' refers to the type of 'Cases' and 'Controversies' that are justiciable under

16   Article III." *Danisco U.S. Inc. v. Novozymes A/S*, 744 F.3d 1325, 1329 (Fed. Cir. 2014) (cleaned

17   up). "The burden is on the party claiming declaratory judgment jurisdiction … to establish that an

18   Article III case or controversy existed at the time that the claim for declaratory relief was filed and

19   that it has continued since." *Id.* "[D]eclaratory judgment jurisdiction generally will not arise

20   merely on the basis that a party learns of the existence of a patent owned by another or even

21   perceives such a patent to pose a risk of infringement, without some affirmative act by the

22   patentee." *UCP Int'l Co. Ltd. v. Balsam Brands Inc.*, 787 F. App'x 691, 698 (Fed. Cir. 2019).

23   (quoting S*anDisk Corp. v. STMicroelectronics, Inc.*, 480 F.3d 1372, 1380–81 (Fed. Cir. 2007)).

24   "Generally, an affirmative act by the patentee is 'conduct that can be reasonably inferred as

25   demonstrating intent to enforce a patent.'" *Id.* (quoting *Hewlett–Packard Co. v. Acceleron LLC*,

26   587 F.3d 1358, 1363 (Fed. Cir. 2009)).

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1   **ANALYSIS**

2 **I.   Red Hat's complaint fails to state a "case" or "controversy" sufficient to establish
          Article III jurisdiction.**
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4   To assess whether a party adequately pleads Article III subject matter jurisdiction over a

5   declaratory judgment action, courts evaluate "whether the facts alleged, under all the

6   circumstances, show that there is a substantial controversy, between parties having adverse legal

7   interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment."

8   *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007); *see also Danisco U.S. Inc. v.*

9   *Novozymes A/S*, 744 F.3d 1325, 1330–31 (Fed. Cir. 2014). While the Federal Circuit has noted

10 that "Article III does not mandate that the declaratory judgment defendant have threatened

11 litigation or otherwise taken action to enforce its rights before a justiciable controversy can arise,"

12 *Danisco*, 744 F.3d at 1330, the Circuit nonetheless requires affirmative acts by the defendant—

13 i.e., conduct that can be reasonably inferred as demonstrating intent to enforce a patent. *See UCP*

14 *Int'l Co. Ltd. v. Balsam Brands Inc.*, 787 F. App'x 691, 698 (Fed. Cir. 2019); *Asia Vital*

15 *Components Co. v. Asetek Danmark A/S*, 837 F.3d 1249, 1253 (Fed. Cir. 2016); *see also* 5

16 Annotated Patent Digest § 37:15 (noting that under the "all circumstances" test there still must be

17 some "affirmative act" by a patentee). Those affirmative acts must be directed at the declaratory

18 judgment plaintiff or its products. *See Proofpoint, Inc. v. Innova Patent Licensing, LLC*, No. 5:11-

19 cv-02288-LHK, 2011 WL 4915847, at *3 (N.D. Cal. Oct. 17, 2011) ("In order to establish an

20 'actual controversy' based on enforcement activity by a patentee, the pleadings must show that the

21 patentee engaged in affirmative acts *directed specifically at the party seeking declaratory*

22 *judgment*.") (emphasis added); s*ee also Ass'n for Molecular Pathology v. USPTO*, 689 F.3d 1303,

23 1323 (Fed. Cir. 2012), *rev'd on other grounds*, *Ass'n for Molecular Pathology v. Myriad Genetics,*

24 *Inc.*, 569 U.S. 576 (2013) (noting that a district court should "limit its jurisdictional holding to

25 affirmative acts by the patentee directed at specific [p]laintiffs").

26   Red Hat's purported basis for this Court's subject matter jurisdiction is that, at the time it

27 filed this action, VirtaMove had initiated litigation against IBM, Hewlett Packard Enterprise,

28 Amazon, and Google alleging that their respective technologies' containerization and container

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1   orchestration technologies—which incorporate aspects of the open-source Docker and Kubernetes

2   technologies—infringe two VirtaMove patents.[3] RedHat argues that its OpenShift technology uses

3   the same Docker and Kubernetes technologies that are at issue in the litigation against the other

4   defendants. Red Hat therefore argues that "[d]espite not naming Red Hat's OpenShift as an

5   accused product in any of the above cases, VirtaMove's infringement allegations—focused on the

6   use and deployment of Kubernetes, Docker, and other open-source software programs—against

7   the same containerization and container orchestration technologies used in OpenShift create a

8   justiciable controversy between Red Hat and VirtaMove." In Red Hat's view, "it is not a matter of

9   'if' VirtaMove will bring an action against Red Hat accusing OpenShift of infringement, but

10   'when.'"[4]

11   Taken together, these allegations are insufficient to establish subject matter jurisdiction

12   under Article III. As VirtaMove explains (and Red Hat does not refute), VirtaMove has neither

13   contacted Red Hat concerning any of VirtaMove's patents nor otherwise suggested that OpenShift

14   or any other Red Hat product infringes any VirtaMove patent. VirtaMove also has not accused any

15   other entity of infringing VirtaMove's patent rights by using OpenShift or any other Red Hat

16   products. In fact, VirtaMove has taken no affirmative act whatsoever against Red Hat or

17   OpenShift, either directly or indirectly.

18   In comparing the facts of Red Hat's declaratory judgment action to the cases Red Hat cites

19   to support a finding of jurisdiction here, it is clear that the circumstances here are meaningfully

20   different. Indeed, every case contains facts involving a specific threat to the declaratory judgment

21   plaintiff or its product.

22   In *In re Mobile Telecommunications Techs., LLC*, 247 F. Supp. 3d 456 (D. Del. 2017), for

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25   [3] Though IBM is Red Hat's parent company, the suit against IBM involves a separate IBM product that does not implicate Red Hat's OpenShift product in a manner any differently from the other defendants' products.

26   [4] Red Hat alleges that VirtaMove knows of OpenShift's incorporation of the Kubernetes and Docker technologies because it has described it in a blog post. *See Shift to the Future Now*, VirtaMove (June 8, 2020), https://perma.cc/E945-N2UX. But the post does not contain evidence of any conduct evincing an intent to enforce a patent. It does not threaten OpenShift or Red Hat, mention VirtaMove's patent, or identify Red Hat as an infringer.

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1   example, although the court partially based its holding on the defendants' litigation against

2   "identically situated parties and asserting identical infringement claims involving identical

3   standards and identical infringing conduct," the key fact on which the court's analysis turned was

4   that the defendants' "complaints in the [other] Actions expressly identify the [plaintiff's] products

5   as 'examples' of equipment that directly infringe the asserted patents." *Id.* at 461–62. The court

6   explained that "[s]uch repeated references identifying [the declaratory judgment] [p]laintiffs'

7   products as infringing may give rise to a 'substantial controversy' about whether those products

8   infringe the patents-in-suit." *Id.* at 461. *See also Microsoft Corp. v. SynKloud Techs., LLC*, 484 F.

9   Supp. 3d 171, 182 (D. Del. 2020). This case differs in that Red Hat does not allege that VirtaMove

10   has made any references to or identifications naming Red Hat or its products as infringing

11   VirtaMove's patents.

12   Likewise, in *Micron Tech., Inc. v. Mosaid Techs., Inc.*, 518 F.3d 897 (Fed. Cir. 2008), the

13   Federal Circuit found that a case or controversy existed where, "after [the declaratory judgment

14   plaintiff] receiv[ed] several threats [from the defendant] itself, [plaintiff] watched [defendant] sue

15   each of the other leading [ ] manufacturers." *Id.* at 901. Unlike in *Micron*, VirtaMove has made no

16   threats to Red Hat.

17   In *Danisco U.S. Inc. v. Novozymes A/S*, 744 F.3d 1325 (Fed. Cir. 2014), the Federal Circuit

18   found a justiciable declaratory judgment action between two parties who had a history of patent

19   litigation involving related products. Here, Red Hat alleges no such history between Red Hat and

20   VirtaMove.[5]

21   And in *UCP Int'l Co. Ltd. v. Balsam Brands Inc.*, 787 F. App'x 691(Fed. Cir. 2019),

22   although the Federal Circuit relied on the defendant's litigation conduct against the declaratory

23   judgment plaintiff's customers for its finding of a case or controversy, the defendant in that case

24   had explicitly stated in its complaints against those customers that the declaratory judgment

25   plaintiff's *own product* was the accused product. *Id.* at 699. In this case, Red Hat's product or

26   process is not itself accused in VirtaMove's litigation against the other defendants. Instead, those

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28   [5] As explained *supra* note 3, the litigation against IBM cannot be fairly considered litigation
     against Red Hat or its products.

1 other lawsuits involve a third-party subcomponent that is also incorporated in Red Hat's

2 technology.

3 It may well be that the theory being pursued by VirtaMove in its lawsuits against IBM,

4 Hewlett Packard Enterprise, Google, and Amazon could also be pursued against Red Hat. But

5 VirtaMove has not yet initiated infringement litigation against Red Hat or made any other

6 affirmative acts directed at Red Hat or its products suggesting it will enforce its patents against

7 Red Hat—perhaps because it does not believe Red Hat's products are infringing or perhaps for

8 some other reason. Regardless, in an action seeking a declaratory judgment of noninfringement,

9 the Federal Circuit requires that a declaratory judgment defendant have engaged in some form of

10 affirmative conduct directed toward the declaratory judgment plaintiff or its products evincing an

11 intent to enforce its patent against the plaintiff or its products before a court can find an Article III

12 case or controversy. *See Innovative Therapies, Inc. v. Kinetic Concepts, Inc.*, 599 F.3d 1377, 1382

13 (Fed. Cir. 2010) (concluding that "the fact that [the defendant] had filed infringement suits against

14 other parties for other products does not, in the absence of any act directed toward [the declaratory

15 judgment plaintiff or its products], meet the minimum standard" for declaratory judgment

16 standing). Here, Red Hat fails to identify any such affirmative acts taken by VirtaMove against

17 Red Hat or its products.

18 Because Red Hat's complaint fails to plead facts establishing this Court's subject matter

19 jurisdiction, the Court grants VirtaMove's motion to dismiss pursuant to Rule 12(b)(1) without

20 leave to amend and without prejudice.

21 **II.   Red Hat's motion to amend its complaint is denied as futile.**

22 Red Hat seeks leave to amend pursuant to Rule 15(d), which provides that "the court may,

23 on just terms, permit a party to serve a supplemental pleading setting out any transaction,

24 occurrence, or event that happened after the date of the pleading to be supplemented." Fed. R. Civ.

25 P. 15(d). In deciding whether to permit a supplemental pleading, the court's focus is on judicial

26 efficiency. *See Planned Parenthood v. Neely,* 130 F.3d 400, 402 (9th Cir.1997). Courts weigh the

27 same factors when deciding motions under Rule 15(d) and Rule 15(a). *See Yates v. Auto City 76*,

28 299 F.R.D. 611, 614, n.4 (N.D. Cal. 2013) (collecting cases). Those factors are "undue delay, bad

1   faith or dilatory motive, futility of amendment, and prejudice to the opposing party." *United States*

2   *v. Webb*, 655 F.2d 977, 979–80 (9th Cir. 1981). A proposed amended claim "is futile if it would be

3   immediately 'subject to dismissal.'" *Nordyke v. King*, 644 F.3d 776, 788 n.12 (9th Cir. 2011)

4   (quoting *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1298 (9th Cir. 1998)).

5   Red Hat seeks to amend its complaint to allege that in December 2024 VirtaMove filed

6   two additional patent infringement suits against Microsoft and Oracle based on the same two

7   patents at issue this action. Red Hat alleges that both Oracle and Microsoft are customers of Red

8   Hat that use Red Hat's OpenShift product, and that Red Hat's OpenShift product is therefore

9   directly implicated in both complaints.[6] Red Hat contends that even if the prior four lawsuits do

10   not establish this Court's jurisdiction the December 2024 lawsuits do so, and that leave to amend

11   should be granted to permit Red Hat to rely upon those lawsuits in establishing this Court's

12   jurisdiction.

13   The Court denies Red Hat's motion to amend because the two new lawsuits, even if

14   considered, do not give rise to an actual case or controversy. Unlike in *Mobile* and *UCP Int'l Co.*

15   *Ltd.*, in which the declaratory judgment plaintiff's products were directly named and necessarily

16   implicated in the other lawsuits, VirtaMove's Microsoft and Oracle complaints do not directly

17   name Red Hat or OpenShift, and instead list several other unrelated allegedly infringing products.

18   Although the two complaints are arguably ambiguous as to whether other products like OpenShift

19   might also be implicated, VirtaMove represented both in its pleadings and at the March 13, 2025

20   hearing that Red Hat and its products are not implicated in either suit and that VirtaMove will not

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22   [6] In the Microsoft litigation, VirtaMove's accused instrumentalities are defined as:

23   Microsoft products and services using secure containerized
              applications, including without limitation Azure Kubernetes Service
24   ("AKS"), Azure Arc-enabled Kubernetes, Azure Container Registry,
              and Azure Container Apps, and all versions and variations thereof
25   since the issuance of the asserted patent.

26   In the Oracle litigation, VirtaMove's accused instrumentalities are defined as:

27   Oracle products and services using secure containerized applications,
              including without limitation Oracle Cloud Infrastructure ("OCI") and
28   Oracle Kubernetes Engine ("OCE"), and all versions and variations
              thereof since the issuance of the asserted patent.

1   pursue infringement theories based upon OpenShift in the Oracle or Microsoft cases should this

2   Court agree that the Microsoft and Oracle lawsuits do not implicate OpenShift. As the Court noted

3   at the March 13, 2025 hearing, Microsoft and Oracle will presumably be able to rely upon this

4   concession by VirtaMove in defending the two new patent infringement lawsuits. Because

5   VirtaMove is now estopped from relying upon OpenShift to establish infringement in the cases

6   against Microsoft and Oracle, the two new lawsuits do not provide any more support for finding

7   an Article III case or controversy than the four older lawsuits identified in Red Hat's complaint.

8   Red Hat cites *Asia Vital Components Co. v. Asetek Danmark A/S* ("*AVC*"), 837 F.3d 1249

9   (Fed. Cir. 2016), for the proposition that a declaratory judgment case or controversy can be found

10   "even when patentee did not specifically reference plaintiff's products as potentially infringing" to

11   argue that standing exists despite the fact that Red Hat and its products are not named in the

12   Oracle and Microsoft lawsuits. But *AVC* identified several other affirmative acts taken by the

13   defendant against the declaratory judgment plaintiff that do not exist in this action. First, the

14   defendant sent a demand letter directly to the declaratory judgment plaintiff. That demand letter

15   mistakenly referenced a product not produced by the declaratory judgment plaintiff, though the

16   plaintiff produced similar products. Then, "[d]espite recognizing that [the declaratory judgment

17   plaintiff] does not manufacture the [specific product], [the defendant] still agreed to a meeting

18   with [the declaratory judgment plaintiff] where they discussed potential licensing of the asserted

19   patents. Moreover, [the declaratory judgment plaintiff] allege[d] that [the defendant] made threats

20   to its customers regarding [the declaratory judgment plaintiff's] infringement of the asserted

21   patents." *Id.* at 1253–54. By contrast, as noted already, VirtaMove has taken no affirmative acts

22   directed at Red Hat or its products and has never threatened Red Hat or others by asserting that a

23   Red Hat product infringes its patent rights.

24   Because the proposed amended complaint's allegations regarding VirtaMove's Oracle and

25   Microsoft cases do not identify any affirmative act by VirtaMove evincing an intent to enforce its

26   patents against Red Hat, adding those allegations would not establish this Court's subject matter

27   jurisdiction. The Court therefore denies as futile Red Hat's motion to amend.

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III.   Red Hat's motion for contingent jurisdictional discovery is denied as futile.

"Because jurisdictional discovery is 'an issue not unique to patent law ... the law of the regional circuit [applies].'" *MG Freesites Ltd. v. DISH Techs. L.L.C., 712 F. Supp. 3d 1318*, 1334 (N.D. Cal. 2024) (quoting *Patent Rights Prot. Group, LLC v. Video Gaming Techs., Inc.*, 603 F.3d 1364, 1371 (Fed. Cir. 2010)). A district court is vested with broad discretion to permit or deny jurisdictional discovery. *See Laub v. U.S. Dep't of Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003). Jurisdictional discovery is appropriate "where pertinent facts bearing on the question of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary." *Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008). By contrast, "a refusal [to grant discovery] is not an abuse of discretion when it is clear that further discovery would not demonstrate facts sufficient to constitute a basis for jurisdiction." *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014) (citation omitted). A request for jurisdictional discovery should "articulate the specific discovery plaintiff seeks to conduct and how such discovery will enable them to make a prima facie showing of jurisdictional facts with respect to the defendant." *Sharma v. Volkswagen AG*, 524 F. Supp. 3d 891, 905 (N.D. Cal. 2021) (cleaned up).

The Court denies Red Hat's motion because the requested discovery would not reveal facts sufficient to establish this Court's subject matter jurisdiction. Although Red Hat largely focuses its request on matters related to personal jurisdiction—an issue that need not be considered in the absence of subject matter jurisdiction—it also seeks leave to pursue discovery regarding "[a]ny non-privileged analysis or decision-making regarding whether to sue Red Hat for patent infringement under the Asserted Patents." Even if Red Hat discovered such facts, however, they would not establish an Article III case or controversy here because they would not involve any *affirmative acts* by VirtaMove demonstrating its intent to enforce its patents against Red Hat. A defendant's purely internal decision-making regarding whether to sue a plaintiff, with no corresponding external conduct, does not constitute such an affirmative act. *See Cisco Sys., Inc. v. OpenTV Inc.*, No. 5:13-CV-0282-EJD, 2013 WL 2285226, at *2 (N.D. Cal. May 23, 2013) (noting that the "patentee's internal investigation or its subjective beliefs regarding infringement are still not relevant to the question of declaratory judgment jurisdiction" and that "it is 'the objective

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1   words and actions of the patentee that are controlling'") (quoting *Hewlett-Packard Co. v.*

2   *Acceleron LLC*, 587 F.3d 1358, 1363 (Fed. Cir. 2009).

3   Accordingly, Red Hat's motion for contingent jurisdictional discovery is denied.

IV.   The administrative sealing motions are denied.

5   Finally, VirtaMove asks the Court to seal various statements in Red Hat's reply and

6   VirtaMove's surreply to its motion for contingent discovery and supporting materials.

7   The public has a longstanding and well-recognized "right to inspect and copy public

8   records and documents, including judicial records and documents." *Nixon v. Warner Commc'ns,*

9   *Inc.*, 435 U.S. 589, 597 (1978). Public access bolsters "understanding of the judicial process" and

10   "confidence in the administration of justice," and it provides a "measure of accountability" for

11   courts. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016). There is

12   thus a "strong presumption in favor of access" to court records. *Kamakana v. City & Cnty. of*

13   *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).

14   To overcome this strong presumption, a party who wishes to seal a court record must

15   generally "articulate compelling reasons supported by specific factual findings that outweigh the

16   general history of access and the public policies favoring disclosure." *Id.* at 1178–79 (cleaned up).

17   Sealing may be justified when "court files ... become a vehicle for improper purposes, such as ... to

18   gratify private spite, promote public scandal, circulate libelous statements, or release trade

19   secrets." *Id.* at 1179. But without more, the "fact that the production of records may lead to a

20   litigant's embarrassment, incrimination, or exposure to further litigation" does not merit sealing.

21   *Id.* "Under this stringent standard," the Court must "conscientiously balance the competing

22   interests of the public and the party who seeks to keep certain judicial records secret." *Auto Safety*,

23   809 F.3d at 1096–99. Civil Local Rule 79-5(c)(1) and (f)(3) requires the party seeking to seal to

24   provide "a specific statement" of the reasons for doing so, explaining the interests that warrant

25   sealing and the injury that will otherwise result.

26   VirtaMove asserts that it is under a confidentiality contract with AppFirst "to keep all terms of

27   this contract, as well as negotiations that resulted in the contract, confidential." The terms and

28   negotiations, however, are not described with any particularity in the items it seeks to seal.

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1   VirtaMove therefore has not articulated a compelling reason for sealing this material in Red Hat's

2   reply and supporting documents.

3   VirtaMove also argues it "has a contractual obligation to keep the terms and conditions of its

4   contract with [Lumenci] … confidential." But, again, the terms and conditions are not described

5   with any particularity, if at all, in the items it seeks to seal. Instead, the material includes only the

6   firm's name, and VirtaMove has not explained why that is confidential. VirtaMove therefore has

7   not articulated a compelling reason for sealing this material in its surreply and supporting
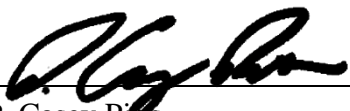
8   documents.

9   The Court therefore denies the administrative motions to seal.

SUMMARY

11   For the foregoing reasons, VirtaMove's motion to dismiss this action is granted without

12   leave to amend and without prejudice. Red Hat's motion to amend its complaint and its motion for

13   contingent jurisdictional discovery are denied. The administrative sealing motions are denied. The

14   parties shall file on the public docket each of the documents previously filed under seal within 14

15   days of this Order.

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17   **IT IS SO ORDERED.**

18   Dated: April 21, 2025

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21   P. Casey Pitts
      United States District Judge

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